

CONTRACT FOR
INFORMATION TECHNOLOGY SOLUTION

THIS CONTRACT is made and entered into by and between the County of San Luis Obispo ("County"), a public entity in the State of California, and Sustain Technologies, Inc. ("Vendor" or "Contractor").

WITNESSETH:

WHEREAS, County is in need of certain special computer software licenses, computing systems hardware and components, maintenance and support services, training services, and professional consulting services related to a Probation collection case management system to replace a mainframe application; and

WHEREAS, Contractor has the certain special computer software, the right to issue a license for the software and has qualified staff who are trained, experienced, expert and competent to provide special maintenance, support, training and professional consulting services for the appropriate fees and the terms and conditions hereinafter set forth; and

WHEREAS, Contractor has different skills and products than can be produced by County civil service commission employees; and

WHEREAS, in accordance with Government Code 31000 special administrative services may be contracted; and

WHEREAS, the purpose of this contract is to provide a comprehensive information technology solution for the County's Probation Department;

NOW THEREFORE, in consideration of the covenants, conditions, agreements, and stipulations set forth herein, the parties hereby agree that Contractor shall perform the services described herein for the compensation set forth herein, subject to the terms and conditions set forth herein.

1. Terms of Contract – The parties agree to the Term of Contract for the implementation of eCourt as described in Exhibit A "Terms of eCourt Implementation Contract", attached hereto and incorporated herein by reference as if set forth in full at this point.
2. General Conditions – The parties agree to the general conditions described in Exhibit B "General Conditions", attached hereto and incorporated herein by reference as if set forth in full at this point.
3. Special Conditions – The parties agree to the special conditions described in Exhibit C "Special Conditions" attached hereto and incorporated herein by reference as if set forth in full at this point.
4. Professional Services – Contractor agrees to perform professional services and the parties agree to the terms and conditions related to said professional services in Exhibit D "Professional Services Agreement" and Exhibit F "Statement of Work" attached hereto and incorporated herein by reference as if set forth in full at this point.

5. Maintenance and Support Services – Contractor agrees to provide maintenance and support services in accordance with the terms and conditions as set forth in Exhibit E “Maintenance and Support Services” attached hereto by reference as if set forth in full at this point and in accordance with the compensation as set forth in the Exhibit F “Statement of Work” document.
6. Deliverables – Contractor agrees to supply the items denoted as in “Table 1- List of Vendor Deliverables” of Exhibit F “Statement of Work”.
7. Software License Agreement – Contractor agrees to provide software licenses as described in Exhibit G “Software License Agreement” attached hereto and incorporated herein by reference as if set forth in full at this point and in accordance with the compensation as set forth in Exhibit I. To the extent that Exhibit G “Software License Agreement” and Exhibit B “General Conditions” together with Exhibit C “Special Conditions” of this contract conflict, Exhibits B and C shall prevail.
8. Notices. Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be sent by certified or registered mail to the County at:

To the County

James E. Salio, Chief Probation Officer
San Luis Obispo County Probation Department
1730 Bishop Street
San Luis Obispo, CA 93401

To the Contractor

Gerald L. Salzman, President
Sustain Technologies, Inc.
915 E 1st Street
Los Angeles, CA 90012

Michelle Stephens, Assistant Secretary
Sustain Technologies, Inc.
915 E. 1st Street
Los Angeles, CA 90012

IN WITNESS WHEREOF, County and Contractor have executed this contract on the day and year as stated below.

CONTRACTOR:

By: Gerald L. Salzman
Gerald L. Salzman, President
Sustain Technologies, Inc.

9/20/13
Date

By: Michelle Stephens
Michelle Stephens, Assistant Secretary
Sustain Technologies, Inc.

9/19/13
Date

COUNTY:

COUNTY OF SAN LUIS OBISPO

A Public Entity in the State of California

COUNTY COUNSEL:

Approved as to form and legal effect.

Rita L. Neal
County Counsel

By: Sam H. Hume
Deputy County Counsel

9/23/13
Date

COUNTY OF SAN LUIS OBISPO

A Public Entity in the State of California

By: _____
Chair, Board of Supervisors

Date

ATTEST:

By: _____
County Clerk and Ex-Officio Clerk
of the Board of Supervisors

Date

EXHIBIT A

TERMS OF eCourt IMPLEMENTATION CONTRACT

1. **Effective Date.** This Contract shall be effective as of the date of the signature of the County. The County shall be the last to sign this contract.
2. **Term of Contract (Delivery of eCourt System).** Contractor's replacement of the current LQ mainframe collection system, initial training of County staff on the System, implementation (i.e., setting up the database, workflow rules, and configuration), customization and adaptation of the Software, data conversion, interface development and testing, and System "go-live" (collectively "Delivery Work") shall be completed in accordance with the project schedule specified in the Statement of Work (Exhibit F) but in no event later than June 30, 2015 unless the Delivery Work is completed on a date prior thereto or unless terminated earlier as provided therein.

EXHIBIT B
GENERAL CONDITIONS

1. **Independent Contractor.** Contractor, its officers, agents, employees, contractors and subcontractors, shall be deemed to be an independent contractor of County at all times during this Contract. Nothing in this Contract shall be construed as creating a civil service employer-employee relationship, partnership or a joint venture relationship. Nothing in this Contract authorizes or permits the County to exercise discretion or control over the professional manner in which Contractor provides services; provided, however, Contractor's services shall be provided in a manner consistent with all applicable standards and regulations governing such services.
2. **No Eligibility for Fringe Benefits.** Contractor understands and agrees that Contractor and its personnel are not, and will not be, eligible for membership in or any benefits from any County group plan for hospital, surgical, vision, dental, or medical insurance, or for membership in any County retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to a County employee. The only performance and rights due are those specifically stated in this Contract or existing as a matter of law.
3. **Warranty of Contractor for Provision of Services & Compatibility.** Contractor warrants that Contractor has obtained and shall keep in full force and effect during the term of this Contract, all permits, registrations and licenses, if necessary, to accomplish the work specified in the Contract. Contractor warrants that it, and each of the personnel employed or otherwise retained by Contractor, will at all times, to the extent required by law, be properly certified and licensed under the local, state and federal laws and regulations applicable to the provision of services herein. Contractor warrants that it has the right to provide the Services hereunder, using all computer software required for that purpose. Contractor further warrants and represents that it has the resources, personnel, expertise and corporate infrastructure available to deliver and support the delivery, implementation and maintenance of the System and meet any milestones and/or deadlines imposed by this Contract, as well as performing the services described herein in accordance with the terms and conditions of this Contract, except upon the conditions or otherwise specified herein.
4. **Compliance with all Laws.** Contractor warrants that Contractor will observe, comply with, and cause all of its agents and personnel to observe and comply with all federal, state, and local laws, rules, regulations and orders applicable to Contractor in Contractor's performance under this Contract. If any conflict arises between provisions of the scope of work or specifications in this Contract and any law, then the Contractor shall immediately notify the County in writing.
5. **Power and Authority of Contractor.** If Contractor is a corporation or a limited liability company, Contractor represents and warrants that it is and will remain, throughout the term of this Contract, either a duly organized, validly existing California corporation or limited liability company in good standing under the laws of the State of California or a duly organized, validly existing foreign corporation or limited liability company in good standing in the state of incorporation or

organization and authorized to transact business in the State of California and have an agent for service of process in California.

6. **Assignment, Delegation or Subcontracting of Contract.** Contractor shall not assign any of Contractor's rights, delegate any of Contractor's duties, or subcontract any portion of Contractor's obligations under this Contract without the prior written consent of the County. No assignment, delegation or subcontracting will release Contractor from any of its obligations or alter any of its obligations to be performed under this Contract. Any attempted assignment, delegation or subcontracting in violation of this provision is voidable at the option of the County.
7. **Subcontractors.** Contractor shall not subcontract the services to be provided by it under this Contract, and no subcontracting of the services to be provided under this Contract or any right or interest therein by Contractor shall be effective, without the prior written consent of the County, which shall not be unreasonably withheld. In the event of any subcontract, Contractor shall remain primarily liable for all of its obligations under the Contract. Contractor is responsible for payment to subcontractors and must monitor, evaluate, and account for the subcontractor(s) services and operations.
8. **Key Project Personnel.** Contractor shall make every effort to ensure that key personnel, if any, identified in this Contract are available to support the administration of this Contract and are not diverted from the project without prior written notice to the County. Key personnel are those individuals who are determined to be central to the management of the project and implementation of the scope of work under this Contract. Should such individual or individuals no longer be employed during the term of this Contract by Contractor, Contractor shall replace such individual or individuals with personnel of equal experience and qualifications, subject to the County's approval. Contractor agrees to identify in writing the members of the project team for Contractor at the time of the signing of this Contract. The County shall have the right to approve all members of the project team, if any, and to request removal and replacement with cause of any member for a lawful reason. The County reserves the right to require a change in Contractor's personnel assigned to this project if the assigned representatives are not, in the County's opinion, meeting its needs adequately and/or timely.
9. **Standard of Performance.** The parties acknowledge that the County, in selecting Contractor to perform the services hereunder, is relying upon the Contractor's reputation for excellence in the performance of the services required hereunder. The Contractor shall perform the services in the manner of one who is a recognized specialist in the types of services to be performed.
10. **Waiver.** No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Contract shall impair any such right power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right power or privilege or the exercise of any other right, power or privilege. No waiver shall be valid unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.
11. **Nondiscrimination.** Contractor agrees that it will abide by all Federal and State labor and employment laws and regulations pertaining to unlawful discrimination

prohibiting discrimination against any employee or applicant for employment because of race, color, religion, sexual orientation, disability or national origin, and those conditions contained in Presidential Executive Order number 11246. Any such notice shall be deemed to have been received if: (a) in the case of personal delivery or facsimile transmission with confirmation retained, on the date of such delivery; (b) in the case of nationally recognized overnight courier, on the next business day after the date sent; (3) in the case of mailing, on the third business day following posting.

12. **Indemnification.** Subject to the limitations contained in this Contract, Contractor shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, liability, loss, injury, damages, costs, expenses, judgments, attorney fees, or other losses that may be asserted by any person or entity, including Contractor, to the extent caused by the willful, wanton or intentional misconduct of, or negligent acts or omissions of, Contractor and Contractor's officers, employees, agents, assigns, or subcontractors relating to Contractor's performance of any obligation or duty provided for or relating (directly or indirectly) to this Contract, excepting only loss, injury or damage caused by the sole negligence or willful misconduct of personnel employed by the County, provided that (a) the County promptly notifies Contractor or any claim for which it intends to seek indemnity under this Section ("Claim"), (b) the Contractor has the opportunity to assume and control the defense of any such Claim, and (c) the County agrees to provide reasonable cooperation (if necessary) to Contractor in its defense of such Claim.
13. **Intellectual Property Indemnification.** Subject to the indemnification procedures in the next sentence, Contractor shall, at its own expense, indemnify, defend, settle, and hold harmless the County and its agencies against any claim brought against the County, based on Contractor's alleged infringement of any patent, trademark, copyright or other proprietary rights of a third party, including trade secret rights under the laws of the United States, unless and except to the extent that such infringement is caused by Contractor's compliance with County's specifications or instructions, or Contractor's use of trademarks or data supplied by County. If any third party makes a claim covered by this Section against the County with respect to which the County intends to seek indemnification under this Section, the County shall give reasonably prompt notice of such claim to the Contractor, including a brief description of the amount and basis therefore, if known. Upon giving such notice, the Contractor shall be obligated to defend the County against such claim, and shall be entitled to assume control of the defense of the claim with counsel chosen by the Contractor, and satisfactory to the County. The County shall cooperate with and assist the Contractor in its defense against such claim in all reasonable respects, at no cost to the County. The Contractor shall keep the County fully apprised at all times as to the status of the defense. Notwithstanding the foregoing, the County shall have the right to employ its own separate counsel in any such action, but the fees and expenses of such counsel shall be at the expense of the County. Neither the Contractor nor the County shall be liable for any settlement of action or claim effected without its consent. Following indemnification as provided in this Section, the Contractor shall be subrogated to all rights of the County with respect to the matters for which indemnification has been made.

14. **Late Payment of Charges or Fees.** The Contractor acknowledges and agrees that the County will not pay late payment charges.
15. **Payment.** Payments shall be due according to the compensation plan in Exhibit I. Payment is due 30 days from the date of the invoice or Acceptance, whichever date is later. Sales tax, if any, shall be noted separately on every invoice. Items that are not subject to sales tax shall be clearly identified on the invoice. Contractor shall be responsible for payment of all state and federal taxes assessed on the compensation received upon this Contract and such payment shall be identified upon the Contractor's federal and state identification numbers(s). The County does not pay Federal Excise Taxes (F.E.T). The granting of payment by the County, or the receipt thereof by Contractor, shall not relieve Contractor of its obligations under this Contract.
16. **Disputed Payments.** If, due to either an issue with the charges on an invoice or the Contractor's failure to perform its obligations under this Contract, the County disputes any charge(s) on an invoice, the County may withhold the disputed amount, provided that (a) there is a reasonable basis for the dispute, (b) all other amounts that are not in dispute have been paid in accordance with this Contract, and (c) the County delivers a written statement to Contractor within five days of the due date of the invoice, describing in detail the basis of the dispute and the amount being withheld by the County.
17. **Insurance.** Contractor, at its sole cost, shall purchase and maintain the insurance policies set forth below on all of its operations under this Contract. All of the insurance companies providing insurance for Contractor/Consultant shall have, and provide evidence of, an A.M. Best and Co. rating of A:VII or above, unless exception is granted by the County's Risk Manager, and be authorized to do business in the State of California. Further, all policies shall be maintained for the full term of this Contract and related warranty period if applicable.
- Commercial General Liability. Policy shall include coverage at least as broad as set forth in Insurance Services Office Commercial General Liability Coverage (CG 00 01) with policy limits of not less than one million dollars (\$1,000,000.00) combined single limit per occurrence. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:
- i. The County, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Contract.
 - ii. The insurance provided herein shall be considered primary coverage to the County with respect to any insurance or self insured retention maintained by the County. Further, the County's insurance shall be considered excess insurance only and shall not be called upon to contribute to this insurance.
 - iii. The policy shall not be cancelled or materially changed without giving thirty days prior written notice to the County in the event of a material change in the policy, and ten days prior written notice shall be given for cancellation for non-payment of premium.

Professional Liability Insurance Policy ("PL"). This policy shall cover damages, liabilities, and costs incurred as a result of Contractor's professional errors and omissions or malpractice. This policy shall include a coverage limit of at least One-Million Dollars (\$1,000,000) per claim, including the annual aggregate for all claims (such coverage shall apply during the performance of the services under this Agreement and for two (2) years thereafter with respect to incidents which occur during the performance of the Agreement; provided that if Contractor's professional liability insurance policy is canceled after the performance of services under this Agreement and additional coverage must be purchased to meet the two year extended coverage requirement, County shall bear the cost of purchasing such additional coverage).

Business Automobile Policy. To the extent Contractor uses Contractor owned automobiles in connection with this Contract, Contractor shall have a business automobile policy which shall include coverage at least as broad as set forth in the liability section of Insurance Services Office Business Auto Coverage (CA 00 01) covering any auto, or if Contractor has no owned autos, hired and non-owned autos coverage is required with policy limits of no less than \$1 million dollars combined single limit for each occurrence. Said insurance shall include coverage for owned, non-owned, and hired vehicles. Policy shall be endorsed with the following specific language or contain equivalent language in the policy: "The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County in the event of a material change in the policy, and ten days prior written notice shall be given for cancellation for non-payment of premium."

Workers' Compensation/Employer's Liability Insurance. Workers' compensation policy shall provide statutory limits as required by State of California. Policy shall be endorsed with the following specific language or contain equivalent language in the policy: "[Contractor and its insurer shall waive all rights of subrogation against the County, its officers and employees for workers' compensation losses arising out of this contract.] The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County in the event of a material change in the policy, and ten days prior written notice shall be given for cancellation for non-payment of premium." Employer's liability policy shall provide one million dollars (\$1,000,000.00) per accident for bodily injury or disease. County shall bear the cost associated with including a waiver of subrogation endorsement in Contractor's workers' compensation policy.

Deductibles and Self-Insurance Retentions. All deductibles and/or self-insured retentions which apply to the insurance policies required herein will be declared in writing and approved by the County prior to commencement of this contract.

Documentation. Prior to commencement of work and annually thereafter for the term of this contract, Contractor will provide to the County properly executed certificates of insurance clearly evidencing the coverage, limits, and endorsements specified in this contract. Further, at the County's request, the Contractor shall provide copies of endorsements and certified copies of the insurance policies within thirty days of request.

Absence of Insurance Coverage. The County may direct Contractor to immediately cease all activities with respect to this Contract if it determines that Contractor fails to carry, in full force and effect, all insurance policies with coverage levels at or above the limits specified in this contract. Any delays or expense caused due to stopping of work and change of insurance shall be considered Contractor's delay and expense.

18. **Availability of Funding.** The County's obligation for payment of any contract beyond the current fiscal year end is contingent on the availability of funding and upon appropriate for payment to the Contractor. No legal liability on the part of the County shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance. If the County notifies Contractor in writing that the funds for this Contract have not been appropriated or provided, this Contract will terminate. In such an event, the County shall have no further liability to pay any funds to the Contractor or to furnish any other consideration under this Contract, and the Contractor shall not be obligated to perform any provisions of this Contract or to provide services intended to be funded pursuant to this Contract. If partial funds are appropriated or provided, the County shall have the option to either cancel this Contract with no liability to the County or offer a Contract amendment to the Contractor to reflect the reduced amount. County shall provide, in good faith and if reasonably practicable to do so, notice to Contractor at least thirty (30) days in advance of such termination pursuant to this Section, and shall pay Contractor for any unpaid deliverables, work and services rendered in a reasonably satisfactory manner and not in dispute, within thirty (30) days of termination of the Contract under this section.
19. **Force Majeure.** Neither the County nor Contractor shall be deemed in default in the performance of the terms of this Contract if either party is prevented from performing the terms of this Contract by causes beyond its control, including without limitation: acts of God; rulings or decisions by municipal, Federal, States or other governmental bodies; any laws or regulations of such municipal, Federal, States or other governmental bodies; or any catastrophe resulting from flood fire, explosion, or other causes beyond the control of the defaulting party. Any party delayed by force majeure shall as soon as reasonably possible give the other party written notice of the delay, including the particulars in reasonable detail of the cause of the inability. The party delayed shall use commercially reasonable efforts to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance under this Contract.
20. **Signatory authority.** Any individual executing this Contract on behalf of Contractor represents and warrants that he/she has full power and authority to enter into, deliver, and perform this Contract on behalf of Contractor, and that this Contract is binding upon said Contractor in accordance with its terms.
21. **Nondisclosure.** All reports, information, documents, or any other materials prepared by Contractor under this Contract are the property of the County unless otherwise provided herein. Such reports, information, documents and other materials shall not be disclosed by Contractor without County's prior written consent. Any requests for information shall be forwarded to County along with all copies of the information requested. County shall make sole decision whether and how to release information according to law.

22. **Conflict of Interest.** Contractor acknowledges that Contractor is aware of and understands the provisions of Sections 1090 et seq. and 87100 et seq. of the Government Code, which relate to conflict of interest of public officers and employees. Contractor certifies that Contractor is unaware of any financial or economic interest of any public officer or employee of the County relating to this Contract. Contractor agrees to comply with applicable requirements of Government Code section 87100 et seq. during the term of this Contract.
23. **Immigration Reform and Control Act.** Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Contract are aware of and understand the Immigration Reform and Control Act ("IRCA") of 1986, Public Law 99-603. Contractor certifies that Contractor is and shall remain in compliance with ICRA and shall ensure that any subcontractors hired by Contractor to perform services under this Contract are in compliance with IRCA.
24. **Third Party Beneficiaries.** It is expressly understood that the enforcement of the terms and conditions and all rights of action related to enforcement shall be strictly reserved to the County and Contractor. Nothing contained in this contract shall give or allow and claim or right of action whatsoever by any other third person.
25. **Fiscal Controls.** Contractor shall adhere to the accounting requirements, financial reporting, and internal control standards as described in the *Auditor-Controller Contract Accounting and Administration Handbook*, (Handbook) which contains the minimum required procedures and controls that must employed by Contractor's accounting and financial reporting system, and which is incorporated herein by reference. Contractor shall require subcontractors to adhere to the Handbook for any services funded through this contract, unless otherwise agreed upon in writing by County.
- A. The Handbook is available at <http://www.slocounty.ca.gov/AC/>, under Policies and Procedures or at the Auditor-Controller's Office, 1055 Monterey Street Room D220, County Government Center, San Luis Obispo CA, 93408,
- B. The Office of Management and Budget (OMB) circulars are available at <http://www.whitehouse.gov/omb/circulars>.
26. **Audit Rights.** Pursuant to California Government Code section 8546.7, every County contract involving the expenditure of funds in excess of \$10,000 is subject to examination and audit of the State auditor. Contractor shall permit the State Auditor to have access to any pertinent books, documents, papers and records for the purpose of said audit. County shall advise Contractor if it becomes aware of such audit at least fourteen (14) days prior to the commencement of the audit. Further, all payments made under this Contract shall be subject to an audit at County's option, and shall be adjusted in accordance with said audit. The Contractor shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in any County audits.
27. **Tax Information Reporting.** Upon request, Contractor shall submit its tax identification number or social security number, whichever is applicable, in the form of a signed W-9 form, to facilitate appropriate fiscal management and reporting.

28. **California Public Records Act.** The County is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Contractor's proprietary information is contained in documents or information submitted to County, and Contractor claims that such information falls within one or more CPRA exemptions, Contractor must clearly mark such information as "CONFIDENTIAL AND PROPRIETARY" and identify the specific pages and sections containing the information. In the event of a request for documents under the CPRA, the County will make reasonable efforts to provide notice to Contractor prior to such disclosure. If Contractor contends that any documents or portions thereof are exempt from the CPRA and desires to prevent such disclosure, Contractor is required to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in San Luis Obispo County before the County's deadline for responding to the CPRA request. If Contractor fails to obtain such remedy within the County's deadline to response, the County may disclose the requested information without obligation to Contractor. If Contractor instructs County to withhold the requested documents, Contractor shall defend, indemnify, and hold the County harmless against any resulting claim, action or litigation, provided that (a) the County promptly notifies Contractor of any claim for which it intends to seek indemnity under this Section, (b) Contractor has the opportunity to assume and control the defense of the claim, and (c) the County agrees to provide reasonable cooperation, if necessary, to Contractor in Contractor's defense of the claim.
29. **Headings.** The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.
30. **Entire Agreement and Modifications.** This Contract supersedes all previous contracts between the parties hereto on the same subject matter and constitutes the entire understanding of the parties hereto on the subject matter of this Contract. Contractor shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. Contractor specifically acknowledges that in entering into and executing this Contract, Contractor relies solely upon the provisions contained in this Contract and no others.
31. **Severability.** Contractor agrees that if any provision of this Contract is found to be invalid, illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Upon determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this Contract so as to affect the original intent of the parties as closely as possible.
32. **Non-Exclusive Agreement.** This Contract does not establish an exclusive agreement between the County and the Contractor. The County expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide products, support and service; the right to request proposals from others with or without requesting proposals from the Contractor; and the unrestricted right to bid any such product, support, or service.
33. **Counting Days.** Days are to be counted by excluding the first day and including the last day, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it is to be excluded.

34. **Time is of the Essence.** Time is of the essence in the delivery of Services by Contractor under this Contract. The acceptance by County of late or partial performance with or without objection or reservation shall not waive the right to claim damage for such breach and shall not constitute a waiver of the rights or requirements for the complete and timely performance of any obligation remaining to be performed by the Contractor, or of any other claim, right or remedy of the County.

35. **Termination for Cause.** If the County determines that there has been a material breach of this Contract by Contractor that poses a threat to health, safety security, and/or welfare of the public, the County may immediately terminate the Contract. In addition, if any of the following occur, County shall have the right to terminate this Contract effective immediately upon giving written notice to the Contractor:

- a. Contractor files bankruptcy, is adjudged to be bankrupt or should have a general assignment to the benefit of its creditors, or if a receiver should be appointed on account of Contractor's insolvency; or
- b. System continues to exhibit defects causing serious disruption of use and/or repeated periods of downtime, notwithstanding Contractor's remedial or maintenance efforts, over a continuous period of three (3) days; or
- c. Contractor fails to enter into an Escrow Agreement with County.

For all other material breaches of this Contract, including, without limitation, the material breaches as specified below, the County must give Contractor written notice setting forth the nature of the breach. If Contractor fails to remedy said breach within ten (10) days from the date of the written notice, to be determined solely by County in good faith, County may terminate the Contract. Contractor shall thereafter have no further rights, powers, or privileges against County under or arising out of this Contract. In the event a breach does not result in termination, but does result in costs being incurred by County, said costs shall be charged to and paid by Independent Contractor, which costs may include, but are not limited to, costs incurred by County in investigating and communicating with Contractor regarding said breach, including staff time. The following is a list of material breaches subject to the cure provision of this section:

- a. Contractor fails to perform Contractor's duties to the reasonable satisfaction of the County; or
- b. Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract; or
- c. Contractor fails to exercise good behavior either during or outside of working hours that is of such a nature as to bring material discredit upon the County; or
- d. Any requisite licenses or certifications held by Contractor are terminated, suspended, reduced, or restricted; or
- e. Contractor has failed or refused to furnish information or cooperate with any inspection, review or audit of Contractor's program or County's use of Contractor's program; or

- f. If Contractor provides (or has a 3rd party provide) ePayment services, the Contractor fails to follow all procedures required by the credit card industry rules and PCI-DSS Level 1 certification.

County shall pay Contractor for any unpaid deliverables, work and services rendered in a reasonably satisfactory manner and not in dispute, within thirty (30) days of termination of the Contract under this section. Once the County has paid in full the agreed license fee for the Software and all associated implementation work, County shall have an irrevocable, nonexclusive, fully-paid, royalty-free license to use and modify the Software during the license term. All obligations to provide services under this Contract shall automatically terminate on the effective date of termination.

36. **Termination for Convenience.** Either party may terminate this Contract at any time by giving the other party at least ninety (90) day's written notice of termination for convenience ("Notice of Termination for Convenience"). Termination for convenience shall be effective at 11:59 p.m., Pacific Standard Time, on the intended date for termination (the "Termination Date"). The terminating party shall deliver to the other party a notice specifying the date upon which such termination will become effective, which shall be at least thirty (30) days after the date of the notice. Termination for convenience shall have no effect upon the rights and obligations of the parties arising out of any services which were provided prior to the effective date of such termination. Contractor shall be paid for all work satisfactorily completed prior to the effective date of termination. After receiving a Notice of Termination for Convenience, Contractor shall not, unless directed by County in writing, perform any additional work under this Contract, and shall settle all outstanding liabilities arising from the termination of subcontracts. Once the County has paid in full the agreed license fee for the Software and all associated implementation work, County shall have an irrevocable, nonexclusive, fully-paid, royalty-free license to use and modify the Software during the license term. County shall pay Contractor for any unpaid deliverables, work and services rendered in a reasonably satisfactory manner and not in dispute, within thirty (30) days of termination of the Contract under this section.
37. **Power to Terminate.** Termination of this Contract may be effectuated by the Chief Probation Officer without the need for action, approval, or ratification by the Board of Supervisors.
38. **Delegation of Authority.** The Board of Supervisors delegates to the County of San Luis Obispo Chief Probation Officer the authority to amend the Contract (including any ancillary contracts, e.g., professional services agreement, support and maintenance) to extend the term, provide for additional services and/or increase compensation to Contractor in an amount not to exceed the greater of the following amounts: ten percent (10%) of the Contract total or twenty-five thousand dollars (\$25,000.00). The Board of Supervisors delegates the authority to the County of San Luis Obispo Chief Probation Officer to amend this Contract (including any ancillary contracts, e.g., professional services agreement, support and maintenance) to extend its term up to one additional year. Any amendment made pursuant to a delegation of authority will only be effective if, prior to the

commencement of services or extension of the Contract, the amendment is memorialized in writing, is approved by County Counsel, and is signed by the County of San Luis Obispo Chief Probation Officer.

39. **Disentanglement.** Contractor shall cooperate with County and County's other contractors to ensure a smooth and timely transition at the time of termination of this Contract, regardless of the nature or timing of the termination. Contractor shall cooperate with County and otherwise take all steps reasonably required to assist County in effecting a complete and timely transition to ensure that there is no interruption of the Services required under this Contract and there is no adverse impact on the supply of Products and/or Services required under this Contract. Contractor shall provide County with all information regarding the Services or is otherwise needed for the disentanglement. Contractor shall deliver to County or its designee, at County's request, all documentation and data related to County, held by Contractor, and after return of same.
40. **Governing Law.** This Contract shall be construed and interpreted according to the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions shall be exclusively vested in state court in the County of San Luis Obispo. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of San Luis Obispo and waive all venue objections.
41. **California Title 24, Energy Standards.** Contractor recognizes that the State of California Administrative Code, Title 24 contains mandatory standards and policies relating to energy efficiency in the state energy conservation plan, and recognizes it may have applicability to Contractor.
42. **Compliance re: Environmental Laws.** For contracts in excess of \$100,000 Contractor shall comply with Section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), Section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738 and Environmental Protection Agency regulations, (40 C.F.R. Part 15).
43. **Confidentiality.**
- Confidentiality – Contractor acknowledges it may have access to, receive confidential information in and agrees to abide by all applicable local, State and Federal laws, rules, regulations, guidelines, and directives regarding the confidentiality and security of probationer information, and other County confidential information. Contractor shall exercise the same care in preventing unauthorized disclosure or use of the Confidential Information that it takes to protect its own information of a similar nature, but in no event less than reasonable care. Contractor shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Contract. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological information, medical records, personnel records and information, grand jury records, investigative records, security records, probationer records and information, and patient records, including the names and other identifying information of persons who are/have been victims, probationers, wards of the court, witnesses, defendants, and

patients. Contractor shall maintain the confidentiality of all such records, data and information, in accordance with all applicable federal, state and local laws, regulations, ordinances, guidelines and directives relative to confidentiality. Contractor shall inform all of its officers, employees and agents providing services under this Contract of the confidentiality provisions contained herein. With respect to any identifiable records or information concerning any inmate that is obtained by Contractor or any other records and information, Contractor shall: (1) not use any such records or information for any purpose whatsoever other than carrying out the express terms of this Contract; (2) promptly transmit to County all requests for disclosure of any such records or information; (3) not disclose, except as otherwise expressly and specifically permitted by this Contract, any such records or information to any person or organization other than County without County's prior written authorization that the records are, or information is, releasable. Contractor will provide fingerprinting clearance for all of Contractor's employees who are providing services to County under this Contract from the California Department of Justice prior to beginning work hereunder. County will pay the costs associated with this fingerprinting clearance requirement.

42.1 Return of Confidential Information – Immediately upon County's request, and at the expiration or earlier termination of this Contract, Contractor shall return or destroy all materials containing Confidential Information, including without limitation, all originals, copies, reproductions and summaries, and all copies of Confidential Information present on magnetic media, optical disk, volatile memory, or other storage device, in a manner that assures the Confidential Information is rendered unrecoverable.

42.2 Ownership of County Information – Contractor acknowledges and agrees that any and all County information and data shall remain the property of County and shall not be used by Contractor for any purpose other than in connection with performance of this Contract, disclosed, sold, assigned, leased, or otherwise provided to third parties by Contractor, or commercially exploited by or on behalf of Contractor, its employees, officers, agents, sub-Contractors, invitees, or assigns in any respect. Contractor shall be entitled to access to certain County information or data, but only to the extent that such access is reasonably necessary for Contractor to perform its functions and obligations under this Contract.

44. **Background Checks.** Background checks will be required for all Contractor staff that will have access to Criminal Justice Information and will be conducted by the County. Contractor will supply the County with the Driver's License Number, Date of Birth, Name, and Social Security Number of all such Contractor project staff promptly after the Contract is signed. Only those who pass will be allowed access. County will delete the records of the provided Driver's License and Social Security Numbers after the background check is completed by the County. This background check requirement applies to any and all subcontractors of Contractor.

45. **Liens, Claims and Encumbrances.** Contractor represents and warrants that all goods, Software, Systems, and materials ordered and delivered under this Contract, if any, are free and clear of all liens, claims or encumbrances. Title to the

material and supplies purchased shall pass directly from Contractor to County subject to the right of County to reject upon inspection of receipt.

EXHIBIT C

SPECIAL CONDITIONS

1. **Defined Terms.**

- 1.1. Software – the eCourt program from Sustain Corporation
- 1.2. System – the combined Hardware and Software which comprise the replacement for the current Probation Department's LQ mainframe based accounting system
- 1.3. Hardware – the servers and software hosted by the County on which the eCourt Software will run
- 1.4. Products
- 1.5. Acceptance

2. **Acceptance (Services).** Acceptance procedures for the Services will be as set forth in this Section. "Acceptance" shall be defined as the County's written agreement that the Services have been completed. The County's refusal to provide such written agreement shall constitute a rejection of the Services as being complete. No payment for Services will be due before Acceptance thereof. Any notice of rejection will explain how the Services fail to meet the requirements of this Contract. Contractor will, upon receipt of such notice, investigate the reported deficiency and exercise reasonable efforts to remedy it promptly. The County, at its sole discretion, will have the option to re-perform the Acceptance test. If the Contractor is unable to remedy the deficiency within sixty (60) days of notice of rejection, the County shall have the option of terminating this Contract in its entirety for default.

3. **Acceptance (Systems).** Acceptance procedures for the System will be as set forth in this Section. Upon Contractor's written notification to County that Contractor has completed the installation of any one or more components of the System, and that such components are ready for testing, County shall begin pre-live performance testing in a non-production environment using the test procedures, standards and timelines contained in Exhibit F, or such other standards as are mutually agreed upon in writing, to determine whether each component meets in all material respects the applicable Specifications and Acceptance Criteria set forth herein. After County has tested the component for a period of up to sixty (60) days, County shall notify Contractor in writing that testing has occurred. "Acceptance" shall be defined as the County's written agreement that the applicable components of the System (or the entire System, in the case of determining whether to have the System "go live") meet in all material respects the applicable Specifications and Acceptance Criteria set forth herein. If County determines that the components do not perform as provided for in this Contract, County shall deliver to Contractor, in writing, a report describing any discrepancies. Contractor shall correct the errors within thirty (30) days after receiving the report. County may then re-test the component(s) for an additional test period of up to thirty (30) days, at the end of which the process described above may be repeated, if deemed necessary by the County. In the event the errors or defects are caused by software defects, Contractor will make a good faith effort to resolve the problem within 30 days. For purposes of this Contract, a "software defect" shall mean not performing according to the mutually agreed functionality as documented in the Statement of Work. Should Contractor fail to achieve Acceptable Performance of the System, the County may, at its election, pursue any remedies available to the Count including, without limitation, (a) terminating this Contract; or (b) accepting the System

at its then level of performance; or (c) permit testing to be further extended for such period as mutually agreed upon by the parties, in writing; or (d) accept those portions of the System that pass the Acceptance Criteria and require Contractor to correct the remaining portions, in which event County shall not be liable for any payments associated with the implementation of such remaining portions until they have been accepted by County; or (e) pursue such remedies as may be available to County at law or in equity.

4. **Manufacturer Warranty.** Any manufacturer warranties for any Products furnished under this Contract shall be passed through from Contractor to the County.
5. **Performance Warranty (Services).** Subject to any warranty exclusions otherwise set forth in this Contract, Contractor warrants that it will provide the Services in a commercially reasonable manner in substantial conformity with the Documentation (the "Performance Warranty"). Except as may be expressly agreed in writing by Contractor, Contractor's Performance Warranty does not apply to defects, problems, or failures caused by the County's nonperformance of obligations essential to Contractor's performance of its obligations.
6. **Performance Warranty (Software):** Subject to any warranty exclusions otherwise set forth in this Contract, Contractor warrants that for all periods for which the annual license fee is paid, that the Software: (a) will substantially perform as Accepted as part of the System pursuant to paragraph 3 above; and (b) will be free from material defects in materials and workmanship. Contractor further warrants for all periods for which the annual license fee is paid, that the Software will be free from harmful code (i.e., computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of computers or software), viruses or other program routines designed to erase, corrupt, alter or otherwise harm files, data or other software programs; and back doors that circumvent the system's security by a hardware or software mechanism which is intentionally hidden by designers of the system, often for the purpose of providing access to service technicians or maintenance programmers. Contractor warrants to the County that no copy of the licensed Software provided to County contains or will contain any "self-help code" or any unauthorized code as defined below. The warranty is referred to in this Contract as the "no surreptitious code warranty." As used in this Contract, "self-help code" means any back door, time bomb, drop dead device, or other software routine designed to disable a computer program automatically with the passage of time or under the positive control of a person other than a licensee of the Software. It does not include software routines in a computer program, if any, designed to permit an owner of the computer program to obtain access to a licensee's computer System for purposes of maintenance or technical support. As used in this Contract, "unauthorized code" means any virus, Trojan horse, worm, or other software routines or equipment components, designed to permit unauthorized access to disable, erase, or otherwise harm software, equipment, or data, or to perform any other such actions. Contractor will defend the County against any claim, and indemnify the County against any loss or expense arising out of any breach of the no surreptitious code warranty.
7. **Performance Warranty (Hardware) (If Contractor is VAR then probably will only use 3 above).** Subject to any warranty exclusions otherwise set forth in this Contract, Contractor warrants that each Hardware component, when delivered to County, will

be in good operating condition, free from defects in material and workmanship. Contractor further warrants that each Hardware component will perform in accordance with the Specifications for a period of thirty six (36) months from the date of County's acceptance of the Hardware.

8. **Software Ownership Warranty.** Contractor warrants that it is the owner of the licensed Software and that it has full right to license to County the (non-exclusive) use of the licensed Software.
9. **Compatibility.** Contractor represents and warrants that the System is compatible with the County's computing environment, including database software, network, and platforms, as described in this Contract. Contractor further represents and warrants that each update, upgrade, enhancement and modification will be compatible with the licensed software delivered by Contractor.
10. **Rights to Provide Services:** Contractor warrants that it has the right to provide the Services hereunder, using all computer software required for that purpose.
11. **Bankruptcy.** In the event Contractor shall cease doing business, shall be declared bankrupt or shall fail to perform its obligations under this Contract, or if any software supplied to County is no longer protected by the laws respecting proprietary interests, then the license granted under this Contract shall, at the option of the County, terminate upon 10 days notice by the County to Contractor.
12. **Escrow.** County and Contractor will execute an escrow agreement with a mutually agreeable third party escrow company within thirty (30) days after the effective date of this Contract. Contractor shall maintain a current copy of all software source code and any and all new releases and updated versions for the software and in the escrow account. Contractor must also deposit all documentation necessary to enable a person of reasonable skill with software to compile and build machine-readable code for the software, to maintain the software, and to fully operate the software. Promptly after release of any update, upgraded, patch, bug-fix, enhancement, new version, or other revision to the software, Contractor will deposit updated source code and documentation with the escrow agent. Contractor will also provide source code and documentation for all customization and special functions, and all associated intellectual property rights, shall become the property of the County (collectively, the "Deposit Material").

The Deposit Material is to be released to the County in the event that the vendor:

- Is no longer in business; or
- Ceases to maintain the software; or
- Fails to maintain the software for a period of forty or more days after the County's written notice to Contractor of the breach of the maintenance obligation; or
- Is unable to pay its debts as they mature in the ordinary course or makes an assignment for the benefit of creditors; or
- Declares or has instituted against bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation or other similar proceedings under any federal or state law; or

- Failure of Contractor to function as a going concern; or
- Fails to support new releases of the operating system or other co-dependent software.

A copy of the escrow agreement shall be kept in the San Luis Obispo County Probation Department file, but does not need to be attached to this contract or incorporated by reference. The fees associated with the escrow shall be shared equally between the County and the Contractor. The San Luis Obispo Board of Supervisors specifically designates to James E. Salio of the San Luis Obispo County Probation Department the power to sign the source code escrow contracts.

Contractor grants the County a license to use, reproduce, and create derivative works from the Deposit Material.